

## REMARKS

1. In response to the Office Action mailed November 12, 2008, Applicant respectfully requests reconsideration. Claims 1-10, 12, and 14-29 were last presented for examination. In the outstanding Office Action, claims 1-10, 12, and 14-29 were rejected. By the foregoing Amendments, claims 1-6, 8-10, 12, 15-19, 21 and 24 have been amended and claims 7 and 14 have been cancelled. Upon entry of this paper, claims 1-6, 8-10, 12, 15-30 will be pending in this application. Of these twenty-five (25) claims, five (5) claims (claims 1, 19, 21, 22 and 24) are independent.

2. Based upon the above Amendments and following Remarks, Applicant respectfully requests that all outstanding objections and rejections be reconsidered and withdrawn.

### *Art of Record*

3. Applicant acknowledges receipt of form PTO-892 listing additional references identified by the Examiner.

### *Amendment to the Specification*

4. Applicant has replaced the Title with the following re-written title: "Clothing Attachment Device for an External Component of a Medical Device."

### *Claim Rejections under §102(b)*

5. The Examiner has rejected claims 1-10, 12, 14-16, 19, 22, 24 and 25 under 35 U.S.C. 102(b) as allegedly being anticipated by U.S. Patent No. 4,322,585 to Liautaud, (hereinafter, "Liautaud"). For at least the reasons provided below, Applicant asserts that these rejections are improper and should be withdrawn.

### *Claim 1*

6. Liautaud is directed to "[a] personal electronic listening system." (See, Liautaud, Abstract.) The listening system includes "miniature transducer or speaker units 15 and 16 . . . positioned in the vicinity of the right and left ears . . . of the user." (See, Liautaud, col. 2, lns.

23-25.) Liautaud discloses that each transducer unit has an enclosure 8, and that pins 27, 28 extend out of the enclosure. (See, Liautaud, col. 2, lns. 29-33 and 39-43.) Additionally, Liautaud discloses pushing pins 27, 28 through clothing and sliding retaining clips 32, 33 over the ends of pins 27 and 28, respectively. (See, Liautaud, col. 2, lns. 46-48.) Liautaud also discloses that a retaining clip 32 includes “a central pin receiving aperture 36,” as well as finger release tabs 38 and 39. (See, Liautaud, col. 2, lns. 59-62; and FIG. 5.)

7. Applicant’s claim 1 recites, in part, “an engagement housing; a plurality of non-spherical engagement members disposed in the engagement housing and collectively configured to receive releasably engage at least a portion of the elongate member.” (See, Applicant’s claim 1, above.) Applicant’s amended claim 1 also recites, in part, “a magnetic unlocking device configured to apply a magnetic field to the non-spherical engagement members to release said elongate member from said non-spherical engagement members when said magnetic unlocking device is in proximity to said non-spherical engagement members.” (See, Applicant’s claim 1, above.)

8. In the Office Action, the Examiner appears to allege that pins 27 and 28 of Liautaud are analogous to the elongate member recited in Applicant’s claim 1. (See, Office Action, page 2.) The Examiner also alleges that elements 32, 38, and 39 of Liautaud are analogous to the non-spherical engagement members recited in Applicant’s amended claim 1. (See, Office Action, page 2.) Additionally, the Examiner appears to allege that finger release tabs 38 and 39 of Liautaud are analogous to the “unlocking device” recited in previously presented claim 1. (See, Office Action, pages 3 and 5.) Applicant disagrees with these assertions.

9. However, regardless of whether the above assertions are correct, Applicant submits that Liautaud fails to disclose “a magnetic unlocking device configured to apply a magnetic field to the non-spherical engagement member.” (See, Applicant’s claim 1, above; emphasis added.) Specifically, finger release tabs 38 and 39 are not in any way “configured to apply a magnetic field to the non-spherical engagement members,” as recited in Applicant’s claim 1. Rather, Applicant submits that finger release tabs 38 and 39 are manually pressed to release a pin member. (See, Liautaud, col. 2, lns. 59-62; and FIG. 5.) Therefore, for at least this reason,

Applicant submits that the rejection of claim 1 under 35 U.S.C. §102 is improper and should be withdrawn.

10. In addition, Applicant submits that Applicant's claim 1 would not have been obvious over Liautaud in view of U.S. Patent No. 4,280,256 to de Jong, (hereinafter, "de Jong"). Specifically, without addressing the apparent impropriety of the combination of Liautaud and de Jong, Applicant respectfully submits that neither Liautaud nor de Jong discloses "a magnetic unlocking device configured to apply a magnetic field to the non-spherical engagement members to release said elongate member from said non-spherical engagement members when said magnetic unlocking device is in proximity to said non-spherical engagement members." (See, Applicant's claim 1, above.)

11. De Jong is directed to "[a] fastener which comprises a closed housing having an aperture therein . . . and a pin that can be inserted through said aperture into said housing." (See, de Jong, col. 1, lns. 4-8.) Specifically, de Jong discloses that "[p]in 2 is inserted . . . into the central aperture of the lock. As the pin is inserted into the lock, **balls 11**, along with thrust member 12, are pushed back . . . against the pressure of spring 13 to such an extent that the pin can pass between **the balls** and be pushed home into the lock." (See, de Jong, col. 2, lns. 45-53; emphasis added.) De Jong also discloses that "the balls will be jammed fast between the walls of cap 6 and the pin, and the resulting frictional force will prevent the pin from being removed." (See, de Jong, col. 2, lns. 55-58.) Additionally, de Jong states that "[t]he pin can accordingly only be removed when the thrust member is retracted by magnetic means." (See, de Jong, col. 2, lns. 66-68.)

12. Thus, Applicant submits that de Jong discloses using balls 11 to engage a pin, and not "non-spherical engagement members," as recited in Applicant's amended claim 1. Additionally, while de Jong does disclose "magnetic means," Applicant submits that de Jong fails to disclose magnetic means capable of applying a magnetic field to finger release tabs 38 and 39 of Liautaud to release a pin (e.g., pin 27 of Liautaud) from finger release tabs 38 and 39. Accordingly, Applicant submits that Liautaud and de Jong, individually and in combination, fail to anticipate or render obvious "a magnetic unlocking device configured to apply a magnetic

field to the non-spherical engagement members to release said elongate member from said non-spherical engagement members . . . .” (See, Applicant’s amended claim 1, above.)

13. For at least the reasons set forth above, Applicant respectfully submits that claim 1 would not have been obvious over the combination of Liautaud and de Jong.

***Claim 19***

14. Applicant’s claim 19 recites, in part, “an engagement housing having a plurality of non-spherical engagement members disposed therein; and an elongate member configured to pass through at least a portion of an item of clothing and to be received in the engagement housing, wherein the non-spherical engagement members are configured to releasably engage said elongate member.” (See, Applicant’s claim 19, above.) Applicant’s amended claim 19 also recites, in part, “wherein the non-spherical engagement members are configured to release the elongate member upon application of a magnetic field to the non-spherical engagement members via a magnetic unlocking device.” (See, Applicant’s claim 19, above.)

15. Applicant respectfully submits that the rejection of Applicant’s claim 19 be reconsidered and withdrawn at least for reasons provided above with regard to claim 1. Specifically, Applicant asserts that the rejection of claim 19 is improper because Liautaud fails to disclose “non-spherical engagement members are configured to release the elongate member upon application of a magnetic field to the non-spherical engagement members via a magnetic unlocking device.” Therefore, for at least this reason, Applicant submits that the rejection of claim 19 under 35 U.S.C. §102 is improper and should be withdrawn.

16. Furthermore, for at least the reasons provided above with reference to claim 1 and below with reference to claim 23, Applicant further submits that claim 19 is patentable over the combination of Liautaud and de Jong.

***Claim 22***

17. Applicant’s claim 22 recites, in part, “[a]n external component of a partially implantable medical device, the external component comprising... a receiving means adapted to receive at least a portion of the elongate member and releasably engage the elongate member, wherein said

receiving means is configured to release the elongate member upon application of a magnetic field to the receiving means by a magnetic unlocking device. (See, Applicant's claim 22, above.)

18. Applicant respectfully submits that the rejection of Applicant's claim 22 be reconsidered and withdrawn at least for reasons provided above with regard to claim 1. Specifically, Applicant asserts that the rejection of claim 22 is improper because Liautaud fails to disclose "receiving means is configured to release the elongate member upon application of a magnetic field to the receiving means by a magnetic unlocking device." Therefore, for at least this reason, Applicant submits that the rejection of claim 22 under 35 U.S.C. §102 is improper and should be withdrawn.

19. As noted above, Liautaud is directed to "[a] personal electronic listening system," (see, Liautaud, Abstract.) The Examiner asserts that the listening system of Liautaud is analogous to both a hearing prosthesis and a medical device. (See, Office Action, pages 2 and 4.) Applicant respectfully disagrees. However, regardless of whether the Examiner's assertions are correct, Applicant submits that Liautaud fails to disclose "a partially implantable medical device," as recited in Applicant's claim 22. Specifically, Applicant submits that Liautaud fails to disclose that any portion of the listening system is implantable. As such, Applicant asserts that Liautaud cannot disclose "[a]n external component of a partially implantable medical device," as recited in Applicant's amended claim 22.

20. Furthermore, for at least the reasons provided above with reference to claim 1 and below with reference to claim 23, Applicant further submits that claim 22 is patentable over the combination of Liautaud and de Jong.

#### *Claim 24*

21. Applicant's claim 24 recites, in part, "[a]n external component of a partially implantable medical device, the external component comprising... a retaining means for frictionally retaining at least a portion of the elongate member in a first configuration and for releasing the at least a portion in a second configuration...wherein the retaining means is configured to transition from the first configuration to the second configuration upon application of a magnetic field thereto." (See, Applicant's claim 24, above.)

22. Applicant respectfully submits that the rejection of Applicant's claim 24 be reconsidered and withdrawn at least for reasons provided above with regard to claim 1. Specifically, Applicant asserts that the rejection of claim 24 is improper because Liautaud fails to disclose "retaining means is configured to transition from the first configuration to the second configuration upon application of a magnetic field thereto." Therefore, for at least this reason, Applicant submits that the rejection of claim 24 under 35 U.S.C. §102 is improper and should be withdrawn.

23. As noted above, Liautaud is directed to "[a] personal electronic listening system," (*see*, Liautaud, Abstract.) The Examiner asserts that the listening system of Liautaud is analogous to both a hearing prosthesis and a medical device. (*See*, Office Action, pages 2 and 4.) Applicant respectfully disagrees. However, regardless of whether the Examiner's assertions are correct, Applicant submits that Liautaud fails to disclose "a partially implantable medical device," as recited in Applicant's claim 24. Specifically, Applicant submits that Liautaud fails to disclose that any portion of the listening system is implantable. As such, Applicant asserts that Liautaud cannot disclose "[a]n external component of a partially implantable medical device," as recited in Applicant's amended claim 24.

24. Furthermore, for at least the reasons provided above with reference to claim 1 and below with reference to claim 23, Applicant further submits that claim 24 is patentable over the combination of Liautaud and de Jong.

#### ***Claim Rejections under §103(a)***

25. The Examiner rejected claims 17-18, 20-21, 23, 26-28, and 29 under 35 U.S.C. 103(a) as allegedly unpatentable over Liautaud in view of U.S. Patent No. 4,280,256 to de Jong. Applicant respectfully requests that these rejections be reconsidered and withdrawn for at least the following reasons.

#### ***Claim 21***

26. Applicant's claim 21 recites, in part "[a]n external component of a partially implantable medical device." (*See*, Applicant's amended claim 21, above.) As recognized by the Examiner, d Jong does not disclose any type of medical device let alone a "partially

implantable medical device.” (See, Office Action, pgs. 6-7.) However, , this limitations is also entirely missing from Liautaud. As noted, Liautaud is directed to “[a] personal electronic listening system,” (See, Liautaud, Abstract.) Liautaud completely fails to disclose that the “electronic listening system” is in any manner “implantable,” or has any components that are implantable. As such, Applicant submits that Liautaud cannot disclose “a partially implantable medical device,” as recited in Applicant’s claim 24. Accordingly, Applicant respectfully requests that this rejection of Applicant’s claim 21 be reconsidered and withdrawn.

27. Additionally, for at least the reasons provided below with regard to Applicant’s claim 23, Applicant submits that the combination of Liautaud and de Jong would not have been obvious.

### ***Claim 23***

28. In the Office Action, the Examiner asserts that Liautaud discloses all of the elements of Applicant’s claim 23, “except wherein the hearing prosthesis is a cochlear implant.” (See, Office Action, page 8.) The Examiner states that “it is well known in the art that the external parts of cochlear implants are commonly attached to the user’s clothing and even the Applicant’s Specification states, ‘the external speech processor unit is typically...removably clipped on the clothing’ (Paragraph 4, Fig. 1).” (See, Office Action, page 8.) The Examiner then concludes that “[i]t would have been obvious to one having ordinary skill in the art at the time of the invention to use the fastening means as described by *Liautaud or de Jong* as a fastening means for a cochlear implant, because it would have been obvious to use any known removable fastening means to achieve the same function as the clips for cochlear implants that are well-known in the art.” (See, Office Action, page 8; emphasis added.) Applicant respectfully disagrees with these assertions.

29. Applicant submits that the proposed combination of Liautaud and de Jong is improper because the Examiner has failed to provide an appropriate basis for making the proposed combination. As stated by the Supreme Court in *KSR International Co. v. Teleflex Inc.*, “a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” (127 S.Ct. 1727, 1741 (2007).) The Supreme Court recognized that “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some *articulated reasoning with some rational*

*underpinning to support the legal conclusion of obviousness.”* (See KSR, 127 S.Ct. at 1741 (citing *In re Kahn*, 441 F.3d 977, 988 (C.A.Fed. 2006); emphasis added.) Applicant submits that the Examiner has failed to satisfy these legal obligations. Applicant submits that the Examiner has failed to provide an adequate reason justifying the proposed combination of Liautaud, de Jong and the cited portion of Applicant’s Specification.

30. As noted above, de Jong is directed to “[a] fastener which comprises a closed housing having an aperture therein . . . and a pin that can be inserted through said aperture into said housing.” (See, de Jong, col. 1, lns. 4-8.) De Jong states that “[s]uch a fastener can be used, for example, *for tagging clothing in a shop* with a detection plate containing an electrical circuit adapted to be detected in a detection zone. Such detection plates will normally be *removed by a shop assistant by means of a special apparatus* if a piece of clothing has been paid for by the customer.” (See, de Jong, col. 1, lns. 13-18.) Additionally, de Jong states that “[i]t is therefore of *paramount importance* that the pin can *only be removed by means of the special apparatus*, which comprises a strong magnet preferably an electromagnet for pulling the balls clear of the pin.” (See, de Jong, col. 1, lns. 26-28.)

31. The Examiner states that

*[I]t is well known in the art that the external parts of cochlear implants are commonly attached to the user’s clothing* and even the Applicant’s Specification states, “the external speech processor unit is typically...removably clipped on the clothing” (Paragraph 4, Fig. 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to use the fastening means as described by Liautaud or de Jong as a fastening means for a cochlear implant, because it would have been obvious to use any known removable fastening means *to achieve the same function as the clips for cochlear implants that are well-known in the art.* (See, Office Action, page 8; emphasis added.)

32. However, Applicant submits that the clip disclosed in the Background section of Applicant’s Specification fails to provide an adequate reason for using the fastening means of de Jong in place of that clip. The Background section of Applicant’s Specification states that “[t]he external speech processor unit is typically carried in a pouch or removably clipped on the clothing, such as a belt, worn by the user *using a clip.*” (See, Applicant’s Specification, page 1, last paragraph; emphasis added.) In addition, referring to a belt clip, the Background section



also states that “such an attachment mechanism allows the device to be *easily removed when needed*.” (See, Applicant’s Specification, page 3, first paragraph; emphasis added.)

33. Applicant submits that the Examiner has failed to provide an adequate reason why it would have been obvious to replace the *easily-removable* belt clip discussed in the Background section of Applicant’s Specification with the fastener of de Jong, which requires a special apparatus for removal. (See, de Jong, col. 1, lns. 26-28, and col. 2, lns. 66-68.) As noted above, the Examiner states that “it would have been obvious to use any known removable fastening means *to achieve the same function* as the clips for cochlear implants that are well-known in the art.” (See, Office Action, page 8; emphasis added.) However, Applicant submits that the belt clip of the Background section of Applicant’s Specification is the only clip for a cochlear implant that the Examiner identifies, and that belt clip performs a different function than the fastener of de Jong. (See, Office Action, page 8.) Specifically, the belt clip attaches the device such that it may be easily removed by hand, while the fastener of de Jong is difficult to remove by hand and instead requires a special apparatus for removal, as discussed above. Thus, Applicant submits that the belt clip and de Jong’s fastener perform two different kinds of attachment and therefore perform two different functions. Accordingly, Applicant submits that the Examiner has failed to provide an adequate reason why it would have been obvious to replace the belt clip with de Jong’s fastener.

***The Proposed Combination of Liautaud and de Jong is based on Impermissible Hindsight***

34. Applicant further submits that the combination of de Jong is improper because the reasoning provided by the Examiner to combine the cited references is based on impermissible hindsight. As stated in Section 2142 of the Manual of Patent Examining Procedure (M.P.E.P.), the “[E]xaminer must step backward in time and into the shoes worn by the hypothetical ‘person of ordinary skill in the art’ when the invention was unknown and just before it was made.” The Examiner must then examine the claimed invention and determine whether the invention as a whole would have been obvious to that hypothetical person. (See, M.P.E.P. §2142.) Although this is inherently an analysis based on hindsight, “impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.” (See, M.P.E.P. §2142.) The Examiner must consider only the prior art, and knowledge derived from

Applicants' disclosure must be put aside in reaching this determination. (*See, In re McLaughlin*, 443 F.2d 1392, 1395 (CCPA 1971).)

35. In the Office Action, the Examiner states that a reconstruction based on hindsight reasoning is proper "so long as it . . . *does not include knowledge gleaned only from the Applicant's disclosure.*" (*See*, Office Action, page 9; emphasis.) However, Applicant submits that the Examiner's reconstruction does rely upon knowledge gleaned only from Applicant's Specification because, as discussed above, the Examiner has failed to provide an adequate reason why it would have been obvious to replace the belt clip of the Background section of Applicant's Specification with de Jong's fastener.

36. As noted above, the Background section of Applicant's Specification states that "[t]he external speech processor unit is typically carried in a pouch or *removably clipped* on the clothing, such as a belt, worn by the user *using a clip.*" (*See*, Applicant's Specification, page 1, last paragraph; emphasis added.) Referring to a belt clip, the Background section also states that "such an attachment mechanism allows the device to be *easily removed when needed.*" (*See*, Applicant's Specification, page 3, first paragraph; emphasis added.) In addition, Applicant submits that the Background section and FIG. 1 of Applicant's Specification do not disclose the use of a fastener requiring a special apparatus for removal, Liautaud and de Jong do not disclose the use of such a fastener for an external component of a cochlear implant, and Liautaud and de Jong do not disclose replacing a clip that is not intended to be difficult to remove with the fastener of de Jong.

37. The Examiner states that "[t]he Applicant admitted that pins and fasteners to connect cochlear implants were well known in the art, and thus it would have been well-known to use any known type of fastener, such as ones disclosed by Liautaud or de Jong." (*See*, Office Action, page 9.) Applicant disagrees and submits that the Examiner has not indicated any portion of the Background section or FIG. 1 of Applicant's Specification that discloses the use of a pin to connect a cochlear implant. Rather, as noted previously, the fastener disclosed in the Background section of Applicant's Specification is an easily-removable belt clip. (*See*, Applicant's Specification, page 3, first paragraph.) For at least the reasons set forth above, Applicant respectfully requests that the rejection of claim 23 be reconsidered and withdrawn.

***Dependent claims***

38. Applicant has addressed dependent claim 23 above. Regarding the remaining dependent claims, Applicant submits that the dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicant respectfully asserts that the dependent claims are also allowable over the art of record.

***Conclusion***

39. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.

40. Applicant reserves the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application. Any cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the patentability of any claims and Applicant reserves the right to pursue such claims in a continuation or divisional application.

Dated: November 3, 2009

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